



Legislative Assembly of Ontario

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# **Standing Committee on Regulations and Private Bills**

## **Third Report 1994**



**3rd Session, 35th Parliament  
43 Elizabeth II**



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Legislative  
Assembly  
of Ontario



Assemblée  
législative  
de l'Ontario

The Honourable David Warner, M.P.P.  
Speaker of the Legislative Assembly

Sir,

Your Standing Committee on Regulations and Private Bills has the honour to present its Third Report for the Third Session of the Thirty-fifth Parliament and commends it to the House.

Christel Haeck, M.P.P.  
Chair

Queen's Park  
December, 1994





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## INTRODUCTION

The Committee presents this Report on regulations filed during 1993 (O. Regs. 1/93-953/93) and the first part of 1994 (O. Regs. 1/94-100/94) in accordance with its Terms of Reference as contained in the *Regulations Act* and the *Standing Orders* of the Legislative Assembly.

### **Regulations Act, s. 12**

This section (reproduced in Appendix A) states that every regulation stands permanently referred to the Committee. It requires the Committee, when examining regulations, to consider "the scope and method of the exercise" of regulation-making power, but not the underlying policies or legislative objectives. From time to time, the Committee must report to the Assembly "its observations, opinions, and recommendations."

### **Standing Order 106(k)**

This Standing Order (reproduced in Appendix B) prescribes various guidelines for carrying out the Committee's statutory mandate—for instance, there must be statutory authority to make each regulation. The Standing Order stipulates that the Committee cannot draw the attention of the House to a regulation without first affording "the ministry or agency concerned an opportunity to furnish orally or in writing to the Committee such explanation as the ministry or agency thinks fit."

## BACKGROUND: STATISTICS FOR 1993

During 1993, 953 regulations were filed with the Registrar of Regulations. These regulations were made under the authority of 191 Acts under the administration of 16 Ministries, Management Board of Cabinet, and the Office of Francophone Affairs. Fifty-nine of the Acts (31%) had at least five regulations made under

them and generated approximately three-quarters of the regulations. See Appendix C for a complete list of these statutes.

As in 1992, the *Planning Act* with 88 regulations accounted for more regulations than any other Act. It was followed by: the *Crop Insurance Act (Ontario)* (71 regulations), the *Highway Traffic Act* (65), the *Game and Fish Act* (28), the *Trades Qualification and Apprenticeship Act* (28), and the *Farm Products Marketing Act* (22). Altogether these six Acts accounted for close to one-third of all regulations filed in 1993.

Almost one-half of the regulations fell under the jurisdiction of three Ministries: the Ministry of Health (211); the Ministry of Municipal Affairs (144); and the Ministry of Agriculture, Food and Rural Affairs (109). Appendix D lists the number of regulations filed in 1993 which were administered by each Ministry/authority.

Statistics for the calendar year 1994 will be provided in the Committee's next report.

## REGULATIONS REPORTED

After reviewing the 953 regulations filed during 1993 and the first 100 filed during 1994, the Committee wrote to six Ministries inquiring about 44 of the regulations. The Committee wishes to thank these Ministries for responding, on the whole, with promptness and for carefully considering our concerns.

After examining the responses, the Committee has decided to comment upon a total of 18 regulations. The comments are arranged by Ministry, and under those headings, by the guideline violated.

The Committee found contraventions of the following guidelines:



- **Regulations should be in strict accord with the statute conferring of power ("Statutory Authority"):** one regulation is reported as having been made by the wrong authority, and as having provided for travel grants slightly different from those authorized by the relevant statute.
- **Regulations should be expressed in precise and unambiguous language ("Precision of Language"):** fifteen regulations are reported. The violations in 13 of these regulations involve inconsistencies between English and French provisions. The violations in the other two regulations, however, do not involve issues of translation, but rather
  - the prescribing of a fee of up to a particular amount (O. Reg. 915/93); and
  - a formula referring to an "average monthly price" which was not yet available (O. Reg. 896/93).
- **Regulations should not have retrospective effect unless clearly authorized by statute ("Retrospectivity"):** the Committee reports two regulations which were expressed to come into force prior to the date on which they were filed with the Registrar of Regulations. The violations are technical in nature—in both cases, the retroactivity is only two days.

## MINISTRY OF AGRICULTURE, FOOD AND RURAL AFFAIRS

### Precision of Language

*O. Regs. 245/93, 247/93, 249/93, 255/93, 260/93,  
262/93, 264/93, 265/93, 268/93, 270/93 and 272/93  
under the Crop Insurance Act*

The above regulations contained a provision in French which was inconsistent with the corresponding English version. More particularly, s. 9, para. 7 of the Schedule to each regulation (apart from O. Reg. 270/93) stated in English that

The Commission shall recalculate an insured person's average farm yield under paragraph 2 or 3 substituting adjusted yield figures under paragraph 5 or 6 for actual yield figures.

The formula in the French version, however, provided for the reverse—that is, it substituted "actual yield" for "adjusted yield." It read as follows:

La Commission recalcule le rendement moyen de l'exploitation agricole de l'assuré conformément à la disposition 2 ou 3 en remplaçant le rendement rajusté obtenu aux termes de la disposition 5 ou 6 par le rendement réel.<sup>1</sup>

[The Commission shall recalculate an insured person's average farm yield under paragraph 2 or 3 by replacing the adjusted yield under paragraph 5 or 6 by the actual yield.]

The Ministry advises that this error has been corrected by O. Regs. 469/94-478/94. A further regulation—O. Reg. 618/94—corrected the same kind of error found in s. 8.1(1)3 of the Schedule to O. Reg. 270/93.

## MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS

### Precision of Language

#### *O. Reg. 348/93 under the Amusement Devices Act*

This regulation contains a Schedule of Fees which is published in both English and French. The French version of item 5(ii)(A) of the Schedule ended with the words "ou pour une glissoire aquatique" ["or for a water slide"]. These words were not found in the English version. Also, item 11 of the English version prescribed a "per person day" fee of \$500. The French version, however, stipulated a fee of \$500 "par personne-heure" ["per person hour"].

In response to the Committee's inquiries, the Ministry acknowledged that there did appear to be an inconsistency in the translation, and that it would determine which

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<sup>1</sup>The French version is slightly shorter in O. Reg. 270/93 and is found in s. 8.1(1)3 of the Schedule. The word "calcule" is used instead of "recalcule" and there are no references to paragraph numbers. However, there was the same kind of inconsistency with the English equivalent (Reg. 252 of R.R.O. 1990).

version of these items was correct. The Ministry has subsequently indicated that the regulation was amended by O. Reg. 636/94. In particular, the English version of item 5(ii)(A) has been amended through the addition of "or a water slide". In the French version of item 11, "par personne-jour" has replaced "par personne-heure".

## MINISTRY OF EDUCATION AND TRAINING

### Precision of Language

*O. Reg. 228/93 under the Trades Qualification and Apprenticeship Act*

O. Reg. 228/93 contained a schedule published in French which was inconsistent with the English version found in Reg. 1049 of R.R.O. 1990. In particular, Schedule 2 of the English version entitled "COOK[:] Work Experience Training" had 23 items. Items 12-23, however, were missing from the French version.

The Ministry responded that the missing items must have been omitted inadvertently and that it would be alerting the Registrar of Regulations to the issue. Items 12-23 have since been added to the French version by O. Reg. 656/94.

## MINISTRY OF HEALTH

### Statutory Authority

*O. Reg. 20/94 under the Ministry of Health Act*

O. Reg. 20/94 provides for the payment of grants for the transportation of patients who ordinarily reside in Northern Ontario. It appears that this regulation has been made under the authority of s. 12(b) of the *Ministry of Health Act*; however, certain questions arise:

- *Maker of Regulation.* Regulations made under s. 12 are to be made by the Minister of Health, subject to the approval of the Lieutenant Governor in

Council. However, as published in the *Ontario Gazette*, O. Reg. 20/94 has been made by the Lieutenant Governor in Council instead. The Committee notes that O. Reg. 20/94 revokes O. Reg. 311/91—also on grants for the transportation of patients in Northern Ontario—which was made by the Minister of Health and approved by the Lieutenant Governor in Council;

- *Scope of Regulation.* S. 12(b) provides for regulations "for the transportation of patients from one hospital or health facility to another hospital or health facility." The travel covered in O. Reg. 20/94 is slightly different. Grants may cover travel "between the place in Northern Ontario where the patient ordinarily resides and a health care facility or the office of a specialist . . . ." (s. 2)

The initial response of the Ministry of Health to these concerns highlighted three aspects of O. Reg. 20/94, as follows:

- The grant program is designed to relieve some of the hardship associated with the travel that is often required in the North in order to obtain health care;
- As drafted, the regulation confers a benefit and does not create any legal obligation;
- It is useful for persons who might want to take advantage of the grant program to see the rules for the program in the form of a regulation.

These observations by the Ministry of Health were helpful in understanding the *policy* underlying the grant program and the reasons for implementing that policy by means of a regulation. They also seemed to imply that by conferring a benefit, the regulation was unlikely to be challenged in the courts. The Ministry's comments, however, did not address the two issues raised above—that is, whether the regulation had been made by the proper authority and whether the exact nature of the travel covered by the grants had statutory authorization. A further response was accordingly requested.

In its second response, the Ministry advised that it had conferred with the Office of Legislative Counsel. That Office had confirmed that O. Reg. 20/94 had been made by the Lieutenant Governor in Council and not by the Minister of Health as



required by the *Ministry of Health Act*. As a result, the Ministry would "ensure that the next time the regulation is remade that this is corrected." In any event, the Ministry felt that "it could be argued that since the regulation is recommended by the Minister to the Lieutenant Governor in Council that in fact the spirit of the Act is complied with."

The Committee wishes to point out, however, that its guidelines require that

Regulations should be in strict accord with the statute conferring of power, . . . . [emphasis added]

It is not sufficient, then, for regulations to comply only with the spirit of the authorizing statute; there must be compliance with the letter as well.

With respect to the issue of the scope of the regulation, the Ministry of Health agreed that "there does not appear to be any authority in this regard." It then repeated those aspects of O. Reg. 20/94 which had been mentioned in its first response, and which are recited above. As we have already noted, those aspects are essentially matters of policy. But as discussed on page 1 of this Report, the Committee's mandate under the *Regulations Act* precludes us from considering the underlying policies or objectives of regulations.

*The Committee wishes to stress that the inclusion of O. Reg. 20/94 in this report should in no way be seen as any kind of comment on the merits of the grant program. Our concern has been solely with whether or not O. Reg. 20/94 complies with the guideline on statutory authority.*

### Precision of Language

#### *O. Reg. 915/93 under the Midwifery Act, 1991*

This regulation was made by the Transitional Council of the College of Midwives of Ontario. It prescribes various fees under the *Midwifery Act*, including

application, administration, and annual fees. All the fees take the form of specified dollar amounts (or a percentage thereof), with one exception—the fee for a "prior learning assessment". The relevant provision (s. 3) reads as follows:

Where consideration of an application for registration involves a prior learning assessment in which the applicant's qualifications are assessed by such means as examinations or an evaluation of the applicant's clinical skills, the applicant shall pay an additional fee *of up to \$2,500*. [emphasis added]

Thus, the fee under s. 3 could theoretically be \$5, \$50, \$500, \$2,000 or any amount up to \$2,500. The section does not stipulate one particular fee, nor does it provide a scale of different fees based on specified criteria. Accordingly, it appears that an applicant falling under s. 3 could not read the section and know with any degree of certainty what fee he or she must pay.

The Ministry points out that

The intent of the council of the College is that the fee be charged on a cost-recovery basis, up to a maximum of \$2,500.00. First the applicant will pay \$300 for a portfolio assessment. After the portfolio is assessed, the applicant will be told the cost of any necessary multi-faceted assessment. This cost will be based on the number of facets that have to be assessed.

After making these comments, the Ministry expresses its agreement that s. 3 could be made more specific. It will accordingly be encouraging the Council of the College of Midwives to change the section the next time the Council proposes amendments to the regulation.

## MINISTRY OF MUNICIPAL AFFAIRS

The problem discussed below involves what might be termed "technical" violations of the Committee's guidelines.

### Retrospectivity

#### *O. Regs. 4/94 and 5/94 under the Planning Act*

Both these regulations are Ministerial orders which provide for the delegation of authority of the Minister of Municipal Affairs under s. 4 of the *Planning Act*.

The two orders are retroactive by two days without clear statutory authority to be so—they were filed on January 6, 1994, but came into force on January 4, 1994.

The Ministry advises that apparently there was a delay in processing these regulations caused by the seasonal holidays at the end of 1993. As a result of this delay, the Minister's signature was not obtained until January 6, 1994. The

Ministry indicates that it has since reviewed its internal procedures to ensure that this problem does not recur.

## MINISTRY OF NATURAL RESOURCES

### Precision of Language

#### *O. Reg. 896/93 under the Game and Fish Act*

This regulation prescribes a commercial fishing royalty payable to the Minister of Finance. S. 3(2) contains the following formula for calculating the final royalty payment:

For the final payment, the value of the species of fish shall be calculated by multiplying the unprocessed weight of the fish of that species harvested each month during the entire year by *the average monthly price for the species as set out in*

*the Schedule* and then subtracting the amount of any previous royalty payments made for the year.  
[emphasis added]

The Schedule, however, does not set out the average monthly price for any species; indeed, every entry under "Average Monthly Price" reads "Not available".

The Ministry explains that no values were set out for "average monthly price" as the royalty had just been instituted. As a result, no year-long "operational information" had been generated which could be used to create an average. Averages, however, will be determined in 1995 to be included in the regulation. The Ministry adds that it is currently studying "the possibility of replacing the present concept with a more simplified provision."



## APPENDICES

- APPENDIX A: *Regulations Act*, s. 12
- APPENDIX B: Standing Order 106(k) of the Legislative Assembly of Ontario
- APPENDIX C: List of Acts under whose authority five or more regulations were filed in 1993
- APPENDIX D: List of Ministries and other authorities, and the number of regulations filed in 1993 for which each is responsible



## **APPENDIX A**

### **Regulations Act, s. 12**

12(1) At the commencement of each session of the Legislature a standing committee of the Assembly shall be appointed, to be known as the Standing Committee on Regulations, with authority to sit during the session.

(2) Every regulation stands permanently referred to the Standing Committee on Regulations for the purposes of subsection (3).

(3) The Standing Committee on Regulations shall examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, and shall deal with such other matters as are referred to it from time to time by the Assembly.

(4) The Standing Committee on Regulations may examine any member of the Executive Council or any public servant designated by any such member respecting any regulation made under an Act that is under his or her administration.

(5) The Standing Committee on Regulations shall, from time to time, report to the Assembly its observations, opinions and recommendations.





## APPENDIX B

### Standing Order 106(k) of the Legislative Assembly of Ontario

106. Within the first 10 Sessional days following the commencement of each Session in a Parliament the membership of the following standing committees shall be appointed for the duration of the Session:

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(k) Standing Committee on Regulations and Private Bills . . . to be the Committee provided for by section 12 of the *Regulations Act*, and having the terms of reference as set out in that section, namely: to examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, but in so doing regard shall be had to the following guidelines:

(i) Regulations should not contain provisions initiating new policy, but should be confined to details to give effect to the policy established by the statute;

(ii) Regulations should be in strict accord with the statute conferring of power, particularly concerning personal liberties;

(iii) Regulations should be expressed in precise and unambiguous language;

(iv) Regulations should not have retrospective effect unless clearly authorized by statute;

(v) Regulations should not exclude the jurisdiction of the courts;

(vi) Regulations should not impose a fine, imprisonment or other penalty;

(vii) Regulations should not shift the onus of proof of innocence to a person accused of an offence;

(viii) Regulations should not impose anything in the way of a tax (as distinct from fixing the amount of a licence fee, or the like); and

(ix) General powers should not be used to establish a judicial tribunal or an administrative tribunal;

and, the Committee shall from time to time report to the House its observations, opinions and recommendations as required by section 12(3) of the *Regulations Act*, but before drawing the attention of the House to a regulation or other statutory

instrument the Committee shall afford the ministry or agency concerned an opportunity to furnish orally or in writing to the Committee such explanation as the ministry or agency thinks fit.

## APPENDIX C

### List of Acts under whose authority five or more regulations were filed in 1993

Assessment Act	6
Audiology and Speech-Language Pathology Act, 1991	6
Chiropractic Act, 1991	6
Chiropractic Act, 1991	7
Courts of Justice Act	21
Crop Insurance Act (Ontario)	71
Dental Hygiene Act, 1991	6
Dental Technology Act, 1991	7
Dentistry Act, 1991	5
Denturism Act, 1991	5
Dietetics Act, 1991	7
Drugless Practitioners Act	6
Education Act	14
Energy Act	6
Environmental Assessment Act	18
Environmental Protection Act	7
Family Benefits Act	9
Farm Products Marketing Act	22
Game and Fish Act	28
General Welfare Assistance Act	8
Health Disciplines Act	12
Health Insurance Act	15
Health Protection and Promotion Act	6
Highway Traffic Act	65
Insurance Act	9
Laboratory and Specimen Collection Centre Licensing Act	5
Land Registration Reform Act	8
Liquor Licence Act	5

Local Roads Boards Act	6
Local Services Boards Act	7
London-Middlesex Act, 1992	11
Massage Therapy Act, 1991	6
Medical Laboratory Technology Act, 1991	5
Medical Radiation Technology Act, 1991	5
Medicine Act, 1991	6
Mining Act	5
Ministry of Colleges and Universities Act	5
Ministry of Health Act	6
Municipal Act	7
Municipal Boundary Negotiations Act	17
Nursing Act, 1991	5
Occupational Health and Safety Act	5
Occupational Therapy Act, 1991	5
Ontario Drug Benefit Act	11
Opticianry Act, 1991	6
Optometry Act, 1991	6
Parkway Belt Planning and Development Act	8
Physiotherapy Act, 1991	5
Planning Act	88
Prescription Drug Cost Regulation Act	7
Provincial Offences Act	18
Provincial Parks Act	8
Psychology Act, 1991	5
Public Hospitals Act	10
Registry Act	6
Rent Control Act, 1992	10
Respiratory Therapy Act	5
Retail Sales Tax Act	7
Social Contract Act, 1993	13
Trades Qualification and Apprenticeship Act	28

## APPENDIX D

### List of Ministries and other authorities, and the number of regulations filed in 1993 for which each is responsible

Management Board of Cabinet	2
Ministry of Agriculture, Food and Rural Affairs	109
Ministry of the Attorney General	61
Ministry of Community and Social Services	32
Ministry of Consumer and Commercial Relations	63
Ministry of Culture, Tourism and Recreation	7
Ministry of Economic Development and Trade	1
Ministry of Education and Training	54
Ministry of Environment and Energy	35
Ministry of Finance	62
Ministry of Health	211
Ministry of Housing	14
Ministry of Labour	15
Ministry of Municipal Affairs	144
Ministry of Natural Resources	53
Ministry of Northern Development and Mines	12
Ministry of Transportation	77
Office of Francophone Affairs	1







ISSN 0835-037X

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